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ABSTRACT

The Federal Election Campaign Act of 1971, a political campaign reform measure, was enacted to limit campaign contributions and independent expenditures, to mandate disclosure of contributors, and to establish public financing of campaigns, all to minimize the opportunity for political corruption. Unfortunate implications of such reform on the exercise of free speech include the following: disclosure puts small controversial parties at a disadvantage, since its contributors must assume the risk of harassment; limitations on contribution or spending constitute prior restraint on the amount of political communication in which people can engage; in advertisements, independent contributors are forbidden to quote the candidate they support; partisan considerations in the Federal Election Commission could detrimentally influence third party funding and the timely release of funds to certain politicians; and campaign expenditure limits impair communication with voters. (DF)

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FREE SPEECH AND CAMPAIGN REFORM

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Note to Convention Participants

Since this paper was prepared the Congress of the United States has made a number of small changes in the Federal Election Campaign Act. These are in the amendments passed December 20, 1980. Most of the changes involve modest increases in threshold levels required for filing reports by donors, candidates, and political committees.

The following changes are the most important ones involving issues addressed in the paper. The threshold for itemized contributions (those requiring the listing of the donor's name, occupation, and place of business) was increased from $100 to $200. The threshold for required reporting of independent expenditures went up from $100 to $250.

For a summary of the changes see Congressional Quarterly Weekly Report, January 5, 1980, pp. 31-33.

Harry Sharp

FREE SPEECH AND CAMPAIGN REFORM

Harry Sharp, Jr.

"Money," Jesse Unruh once remarked, "is the mother's milk of politics." And raising that money Hubert Humphrey lamented was the most depressing aspect of political life. Coming as it did from a man who loved campaigning, that judgment must be taken seriously. Toward the end of the 1960's and through the 1970's Americans worried. Pushed hard by such high-minded groups as Common Cause and the League of Women Voters, both the Congress and the state legislatures passed a series of acts designed to (1) force timely, public diclosure of contributions and expenditures, (2) restrict the size and legal sources of contributions, (3) require candidates to keep detailed records, and (4) provide substantial public subsidies for some campaigns.

The potency of "campaign reform" as a campaign issue in the period from about 1969 to 1978 cannot be denied. In California, for example, young Jerry Brown, then the secretary of state, made reforms of Proposition #9 a major theme on his first campaign for Governor. In the backwash of Watergate, Congress swept far downstream from the position it had reached with the Federal Election Campaign Act of 1971. It passed the FECA Amendments of 1974 and 1976.

Although the corruption exposed at Watergate was serious, the question of whether Congress's responses moved always in the proper direction is as yet unanswered. In the present paper I wish (1) to briefly review the federal campaign regulations established in 1974, (2) to examine the landmark decision (Buckley vs Valeo 1976) in which the Supreme Court sustained important provisions and struck down other equally significant sections of that law and finally, (3) to share with you some of the lingering free speech problems which I and others find in these widely praised "reforms."

As amended in 1974, the FECA of 1971 created what Professor Marlene Nicholson has properly termed, "the most comprehensive legislative reform of campaign financing in this country's history." [Nicholson p. 323] It created an independent FEDERAL ELECTION COMMISSION composed of six members, two appointed by the President, two by the Senate and two by the House. It provided a complex formula for federal matching funds to finance candidates in Presidential primaries and total financing of major party candidates in the general election campaign. It limited the amounts that individuals, committees, and parties

could contribute to candidates for the House, the Senate and the Presidency and the amounts that candidates for each of those offices could spend. Last, it provided that candidates, committees and parties report their contributions and expenses at regularly scheduled intervals to the FEC which would in turn make those reports immediately available to the press and the public.

Contributions from individuals and organizations were limited to $1,000 per candidate per election. Political committees which supported five or more candidates (such as COPE, AMPAC, etc.) were allowed to contribute up to $5,000 per candidate per election. In addition the amounts which candidates and their immediate families could contribute to their own campaigns were circumscribed in an effort to prevent the very rich from "buying the office." Finally, in an effort to avoid circumvention of the campaign contribution limits, the amount which an individual or group could spend in providing, on their own, support for a favorite candidate (so-called independent expenditures) was set at $1,000. So much for limits on contributions and independent expenditures. On the candidate's side the seeker of a House seat could spend up to $70,000 in a primary campaign and another $70,000 in the general election. The limitations for Senatorial campaigns were dependent upon the number of voting age persons in the state. Candidates were required to record contributions as small as $10 in the campaigns' books and every contribution of $100 or more had to be separately reported to the FEC with the contributor's name, occupation and place of business.

I. The Buckley Decision

Predictably, the passage of this sweeping legislation precipitated immediate challenge in the courts. A suit challenging almost all the major provisions was filed on January 2, 1975, which was the very day the act became law! The plaintiffs--strange bedfellows at first glance--were in fact carefully chosen. They included conservative Senator James Buckley of New York, independent presidential candidate Eugene McCarthy, Stewart Mott, financier of liberal causes, the Libertarian Party and the New York Civil Liberties Union. The point, of course, was to insure not only that the plaintiffs included folks from across the political spectrum but also people with substantial interests in each issue.

Considering its scope and complexity the case moved rather quickly from the district court in the District of Columbia, through the Circuit Court of Appeals to the Supreme Court itself, where oral arguments were heard on November 14th. If we can trust the account of N.Y. A.C.L.U. Director Ira Glasser, it was quite a show. Arguing for the plaintiffs were first ranking attorneys

including Joel Gora of A.L.C.U. and Ralph Winter of Yale. Defenders of the statute included Lloyd Cutler on behalf of the Common Cause and Archibald Cox hired by the Congress of the United States. Among spectators were John Gardner, Buckley, and Edward Kennedy. On the bench Glasser reports that the Justices "were all ready for bear. They had all read the briefs backwards and forwards, and they knew the material cold." [Glasser, p. 16]

Two and a half months later the court handed down its lengthy opinion in the case of Buckley v. Valeo. [424 U.S. 1] With respect to the Federal Elections Commission the court ruled that Congress in creating the FEC had overlooked Article II, section 2 of the U.S. Constitution. That section is the one you probably learned about in the 8th grade. It says "The President shall nominate and with the advice and consent of the Senate shall appoint . . . officers of the United States." Inasmuch as the FECA Amendments of 1974 had Congress appointing four of the six commissioners, the court ruled that the Commission would have to be reconstituted under new legislation which provided for Presidential nominees only. Of course the lawmakers' original reason for having congressional appointments had been to secure an FEC which was responsive to the members' concerns as political candidates. Nevertheless with the 1976 campaign in high gear and the public demanding "reforms" the new FEC was born in the FECA Amendments of 1976 which became law on May 11, 1976.

II. Disclosure

So far as disclosure was concerned, the justices held that the forced release of information on contributions and expenditures is a justifiable infringement upon freedom of association and speech. They concurred in Congress' finding that the electorate is given valuable information "as to where political campaign money comes from and how it is spent by the candidate." [H.R. Rep. No. 92-564, p. 4] In addition they agreed that disclosure is a potent remedy for both the fact and the appearance of corruption. This position was consistent with the conclusion of the late Justice Brandies: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." [Cited by Fleming, p. 664] Lastly, the court held that disclosure was an appropriate instrument for gathering the data necessary to detect violations of the contribution limitations elsewhere enacted. [at 68]

Plaintiffs in Buckley had elected not to challenge disclosure in principle, rather they had contended that statute as drawn was overboard and vague.

They questioned the necessity of requiring campaigners to keep records on contributions as small as $10 and on reporting separately each contribution of $100. The court, although suggesting that the $10 and $100 limits might be severe, nevertheless, bowed to Congress's decision.

Appellants argued that the disclosure requirements would place a heavy burden upon small political parties. For fear of harassment, they argued, people would refrain from contributing. Consequently, both the health of the minor parties in particular and vitality of the political process in general would be adversely affected. Moreover, the possibility that minor party candidates will actually win election is remote. It follows that the risk of corruption (a real threat with major party candidates) is similarly remote. For all these reasons appellants urged the court to grant minor parties a blanket exemption from reporting and disclosure requirements

The court refused. Instead it offered a case by case exclusion for any group that could come into court and "show a reasonable probability that compelled disclosure of its contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." [at. 74].

In Oregon the Socialist Workers' 1974 Campaign Committee sought injunctive relief against disclosure required by a state act on grounds that its supporters would be harassed if their names were disclosed. The federal district court decided no "threats, harassment or reprisals" had been shown and said further that in our election campaign people should "stand up and be counted." [FEC, Election Case Law 1978, p. 30] On the other hand when the national Socialist Workers Party filed suit in the District of Columbia seeking exemption from the FECA, they fared better. In January of 1979, the party and the FEC reached a settlement under which it would not be required to list the names of contributors before 1985. In addition the party may use a disclaimer to this effect on its promotional literature. [FEC. Record, March 1979, p. 4] While information available to me on these cases is sketchy, it seems clear that substantial evidence indicating that harassment may take place will satisfy the "reasonable probability" standard set forth in Buckley. In the federal case (Socialist Workers Party v. FEC) the plaintiff introduced evidence to show that in the past the F.B.I. had spied upon and otherwise sought to disrupt its operation. [Ibid. p. 4] However, the litigation took 2½ years, a period covering two federal elections!

Elsewhere, in a case that has direct application to the basic justification

for forced disclosure, a Federal District Court in Florida upheld a state law which requires officials to disclose their wealth and sources of income. Citing Buckley, the judges ruled that the disclosure laws in question were a proper means of stopping corruption. The Circuit Court of Appeals agreed and in January, 1979, the Supreme Court refused to hear an appeal. [FEC, Election Case Law, 1979, p. 31]

If we turn from case law to policy, it seems to me that well crafted "sunshine" legislation does have a place in the canon of our election laws. As a voter I find it helpful to know who is supporting whom. As a citizen I do want to discourage both the giving and receiving of those contributions which "buy" not just a legislator's ear but his committee vote to boot. Still minor parties have played a very important role in our political past. Often they start the arguments and thereby force major party candidates to confront issues previously unaddressed. Clearly that is a free speech payoff which we want to encourage. Simultaneously, the chance that a minor party spokesperson will ever win office is so small as to diminish the public interest in disclosing the identity of his or her supporters. I conclude that state legislatures should grant minor parties that blanket exclusion from disclosure which the court has seen fit to deny. For example, each new party might be excluded until and unless it polled, say, 10 to 15% of the votes in a given election. When it reached that size (or some other reasonable figure), the danger of threats and harassments would be diminished simply by weight of numbers and the public interest in disclosure would begin to have some substantial character.

III. Limitations on Contributions and Expenditures

Compulsory disclosure is actually the most benign of the FECA controls. It brings campaign behavior out into the open, but leaves behavior itself unrestrained. In contrast, limitations on how much people can contribute or spend are regulations of the behavior itself. They are essentially prior restraints on the amount of communication in which people can engage! Moreover, the $1,000 maximum which an individual or a group can contribute to a Congressional or Presidential candidate is not enough to buy just one page of advertising in the Washington Post. [Example cited by Judge Edward Tamm in his court of appeals dissent in Buckley, 519 F 2nd. at 916] For this reason, such limitations should be viewed with suspicion by those of us who think speech should be as free as possible.

So we ask, "On what grounds can these restraints be justified?" Advocates say, first, that the limitations are necessary to prevent political corruption. In 1974, corruption was a voting issue. The reformers had no trouble finding

examples. For instance, they cited the infamous milk deal. In that case producers sought an increase in the federal support level for milk but were turned down by the Department of Agriculture. They contributed about $300,000 to Nixon's campaign and subsequently got much of what had previously been refused. Even when everybody behaves honorably, it is argued, large contributions create implicit obligations and the appearance of impropriety. Reflecting what most newspaper readers probably believed in 1975, the Court of Appeals upheld the limitations on contributions "in the context of past abuses and present needs." [Emphasis, added 519 F 2nd. at 851-52]

Secondly, reformers said constraints are justified as a means of promoting equality. Nicholson contends that if the very rich are permitted to spend tens of thousands of dollars, then their speech may "drown out the voices of the less affluent in the political arena." [Nicholson, p. 336] It follows, she believes, that reasonable limitations actually foster first amendment values. They "structure the marketplace of ideas so as to prevent monopolization and encourage a diversity of viewpoints." [p. 328] From this perspective the "good" campaigns are those financed by large numbers of small contributions. Similarly, the unfair ones are those underwritten by the so-called fat-cats. Nixon's 1972 campaign again provided the prime example. The Center for Public Financing of Elections, a coalition lobby group, observed that a mere 154 persons had combined to provide $20 million. Each of those well-healed contributors kicked in $50,000 or more. [Center Progress Report #6, March 29, 1974] Echoing the Center's egalitarian dogma the Court of Appeals said the $1,000 limitation "tends to equalize both the relative ability of all voters to affect electoral outcomes, and the opportunity of all interested citizens to become candidates. . . .This broadens the choice of candidates and the opportunity to hear a variety of views." [519 F 2nd. at 841] Moreover, the court said the $1,000 limitation was so high that it would restrain the free speech only of those who have very substantial resources.

To summarize limitations on contributions are said to be an appropriate infringement upon first amendments rights in that they preclude both the fact and the appearance of corruption and because they tend to equalize the voices of the rich and middle class. Unfortunately, I believe, the Supreme Court agreed that limitations on contributions are constitutional. The majority said this limitation was justified as a means of preventing corruption and the appearance of same. [424 U.S. at 25] Although contributions are a "symbolic expression of support" and therefore a kind of "speech" the $1,000 limitation "entails only a marginal restriction upon the contributor's ability

to engage in free communication. A contribution serves as a general expression of support for the candidate and his views but does not communicate the underlying basis for the support. The quality of communication by the contributor does not perceptibly increase with the size of his contribution since the expression rests solely on the undifferentiated symbolic act of contributing." [at 21]

What the majority seems to be saying is that the "contributor is not articulating arguments, but merely announcing that, for example, "I like Ike." The contributor has a right to make that announcement but has no right to repeat it ad nauseam. Congress gave him $1,000 worth. The court said that was enough, and provided this further rationale: "While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor." [emphasis added, at 21] Now the most reasonable inference is that speech via a second party deserves less protection than speech from the self. Using this criterion the court might also hold that ghost written speeches are not entitled to full first amendment protection. Of course, such an eventuality would come close to muzzling half the Congress! More seriously the doctrine that says we can limit financial support for the speech of others would seem to discriminate against the inarticulate, those who need to hire others to speak for them in the market place of ideas. This is not simply a problem for the well-to-do mute who want to contribute several thousand dollars to his favorite presidential candidate. The limitation applies to organizations and individuals alike. So I cannot agree that this restriction places only minimal burden upon first amendment interests.

In one of those curious twists which make judicial argumentation so interesting the court which upheld restrictions upon campaign contributions struck down limitations on expenditures. "A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration and the size of the audience reached." This is because, the majority continued. "virtually every means of communicating ideas in today's mass society requires the expenditure of money." [at 19] No doubt that is so. In the electronic age an underfinanced campaign is often doomed to failure.

So while some reformers decried this component of the Court's decision, exponents of free speech welcomed it. But the joy is considerably tempered when we examine, in tandem, the limitations on contributions and the banning of limitations on expenditures. For instance, the 1974 Amendments included restrictions on the amounts of their own money which wealthy candidates could use in the pursuit of public office. (The limits were $50,000 for President and Vice-President, $35,000 for Senator, $25,000 for Representative.) The court might have construed such expenditures as "contributions to one's own campaign" and thus subject to regulation. It did not do so. Consequently, the very rich candidate can spend without limit his or her own money campaigning for federal office. Senator John Heinz--he of the 57 varieties Heinz fortune--is reported to have dropped more than a million in winning election to the Senate from Pennsylvania. But wealthy supporters of Heinz's opponent could give no more than $1,000. Under the law it is plainly better to be rich than to merely have rich supporters. Similarly, it is better to be supported by a hundred small organizations each of which can contribute $1,000 than by a single large one which might be able to contribute $100,000.

In fairness, I should add that the impact of restrictions upon contributions may be mitigated by the Court's finding that so-called "independent expenditure" shall not be restrained. An independent expenditure is one made "without cooperation or consultation with any candidate or any authorized committee or agent. . ." [U.S. Code, Title 2, § 431 (p)] Unlike contributions, independent expenditures are not speech by someone else. The court says they "pose little danger of actual or apparent quid pro quo arrangements as do large contributions." [at 44] The majority flatly and vigorously rejected the notion that the first amendment admits governmental attempts to structure the market place of ideas or equalize the loudness of contending voices. [at 48]

Regrettably, I think, the 1976 Amendments and the FEC's regulations seriously undercut the value of the Court's decision on this issue. The Amendments provide that if independent expenditures are made in cooperation or consultation with a candidate they will be treated as contributions. This is reasonable. But in addition the law says: [U.S. Code, Title 2 § 441 a (7) (B) (ii)]

> The financing by any person of the dissemination, distribution, or republication, in whole or in part; of any broadcast or any written graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure for purposes of this paragraph . . . .

In other words an independent supporter is not permitted to quote the candidate he supports. If I want to buy an advertisement endorsing, say, Jack Samosky's Congressional campaign, I am not permitted to use in that ad any photographs used in Jack's own materials. I don't dare use his logo. I probably should not quote any of his slogans. The FEC regulations also require that my ad carry a disclaimer to the effect that it is sponsored by me and "not authorized by any candidate." [FEC Campaign Guide for Political Committees, September 1978, p. 23] Whenever my costs reach $101, I am required to file with the FEC a report detailing the nature of my expenditures, to whom they were paid, when and how much. I must report the candidate's name, whether my ad endorsed or opposed him, and the fact that the ad was placed without his cooperation or suggestion. The report shall also include my name, occupation and principal place of business. And just to be sure I take all these rules seriously, Regulation 109.3 says I must sign and have the report notarized under "penalty of perjury." [FEC Regulations, April 1977, p. 46] Ask yourselves, "do these regulations infringe upon first amendment rights?" By what doctrine are we forbidden to quote the lines of those we support?

While I have been unable to locate any legislative history for this provision of the law, its authors would presumably respond that the rules are merely to preclude circumvention of the limitations on contributions. It is apparent, however, that they restrain the quantity and quality of our participation in the political debate. And that is precisely what the court said Congress could not do, when it struck down the limits on independent expenditures. It would be nice to report to you that this offensive paragraph has been ruled unconstitutional, but so far as I know, it is yet to be challenged.

Meanwhile, the chilling effect of the ban on "cooperation and consultation" between candidates and independents continues. You will recall that independent expenditures must be made in the absence of any cooperation, consent, consultation, or suggestion from the candidate or his campaign. [FEC, Regulation 109.1 (a)] Now suppose, going back to a previous example, I have coffee with Jack here at the convention. In the course of our conversation, he says to me, "The prospects in Hayward seem pretty good, but I'm weak in the east side of the district. I'm going to have to develop a strategy to overcome that." What follows is a discussion of possible rhetorical strategies, typical speech communication shop talk. Can I then safely buy an advertisement supporting his campaign? And if not, hasn't my freedom of speech been substantially circumscribed?

Perhaps you might respond that Sharp is grasping at straws. I'm not. Regulation 109.1(a)(4)(i)(A) states that cooperation will be presumed to have occurred whenever my expenditure is "Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate or the candidate's agent . . ."

Consider the impact as reported by Clagett and Bolton. In June of 1976, just after these Amendments became law, a consultant to the Citizens for Reagan committee was invited to take part in a round table discussion at the convention of the Conservative Party of New York State. The discussion topic was what conservatives might do to help Reagan win the Republican nomination. The consultant declined the invitation on the grounds that participation might later be construed as "cooperation" or "consultation." Since he would surely have discussed plans, projects or needs," his refusal is understandable. Plainly, speech was chilled in this instance. [Clagett and Bolton, p. 1363] I doubt that this is the sort of effect the authors of this legislation had in mind when they wrote it, yet surely it is an effect which we must deplore.

IV. Public Finance

Tax dollar financing of Presidential campaigns began in 1976 when fourteen persons--they included such obscure candidates as Terry Sanford and Ellen McCormack--received matching federal grants for the primary season. In the general election both candidates got $21.8 million. Today many people would extend the principle of public finance to Congressional and state campaigns. So it is appropriate to inquire, how will public finance advance the causes of good government and of freedom?

Proponents respond that it can be used to balance electoral contests. In the Congressional arena, for example, matching grants would permit an underfunded challenger to mount a substantial campaign against a well entrenched incumbent. Secondly, the grants strengthen the voices of those many small contributors whose contributions are matched. And in the special case of the Presidential campaign, each side (assuming both accept public funding) has exactly the same number of dollars available for the general election. Thus, public funding is said to make for fairer elections, freer candidates, better informed voters.

In Buckley, appellants challenged tax support of campaigning on several grounds, all unsuccessful. First, they argued the establishment clause of the first amendment. Government money for campaigns, they suggested, was akin to government money for churches. Unimpressed, the Supreme Court majority saw public finance not as a "Congressional effort . . . to restrict or censor

speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process. . ." [at 92] The Court rejected appellants' "Concern that public funding will lead to government control of the internal affairs of political parties. . ." In a footnote they dismissed such worries as "wholly speculative." [Note 126 at 93]

Although the formula for dispensing tax dollars to presidential candidates is straight-forward and the FEC's membership is bipartisan it is not certain that corruption or the appearance of same have been banished from the world of campaign finance. In 1976, you may recall, former U.S. Senator Eugene McCarthy ran for President as an independent. He didn't get far, but did reach the point at which he would seek matching funds from the FEC. On a three to three vote the Republican members of the commission approved giving him that money and the Democrats disapproved. Without a majority vote he got none. [Arnett, p.203] Inasmuch as McCarthy's campaign would have hurt Carter more than Ford there is reason to suspect that partisan considerations may have influenced the outcome.

Looking ahead it is possible to envision other situations in which the Commission will have to exercise judgements which could profoundly influence the outcome of elections. Suppose, for instance, that some single purpose organization launches a campaign of ostensibly "independent expenditures" in behalf of, say, the Republican candidate. Supporters of the Democrat find some evidence to suggest the effort is, in fact, made in collusion with the beneficiary. At this point they could attempt to enjoin the dispensing of public funds to their opponent on the grounds that he was violating the conditions of their receipt. This is because in a general election presidential candidates can use only the public money they are given. (Since I wrote that paragraph supporters of Senator Kennedy have filed suit against President Carter's campaign charging violation of the spending limits via partisan use of government resources. [LA Times, Jan. 28, 1980]) As Polsby, from whom I borrow this example, points out even a brief interruption in the flow of money "could well prove fatal to a presidential campaign." Moreover, in response to a suit the FEC could very well find itself entangled in the internal affairs of the political parties and the candidates' campaign committees. The free speech implications are simply staggering.

Involvement by the political arms of government, the Congress, and the Treasury Department could be, and probably would be, even worse. I would remind you that when the Court handed down its decision in Buckley the nation

was, as it is today, in the early period of the presidential primaries. Many candidates were depending upon matching funds, but the FEC, temporarily put out of business, could no longer disburse the matching grants for which the contenders had qualified. Recognizing the urgency of this predicament the Court gave Congress six weeks to rewrite the law reviving the Commission. It took twelve weeks. Consequently, Carter, Reagan and the other candidates struggled along without the matching dollars until mid-May. Of this unseemly development David Broder observed on April 18th:

> The beneficiaries of Congress's lassitude are President Ford, who has plenty of opportunities for free publicity, and Senator Hubert Humphrey . . . who has no current campaign expenses and whose chances of winning the Democratic nomination depend on a stalemate among the active contenders. The less Carter, Jackson, Udall and Reagan can campaign in the next six weeks, the better off Mr. Ford and Humphrey are.
>
> Now it so happens that the candidate most congressional Republicans would like to see nominated is their old friend Jerry Ford. And the favorite of most congressional Democrats is their old pal Hubert. Anyone who believes that it's coincidence that Congress left the other candidates financially stranded is likely to be someone who is probably still waiting for the Easter Bunny . . . . [Broder, Washington Post, April 18, 1976, B-7]

It is, simply not possible, I submit, for the political branches to be even-handed when they dabble in campaign regulations. The FEC handles things on a day to day basis, but Congress and the executive are going to be involved now and again. This year both Ronald Reagan and John Conally have rejected matching funds for the primaries because they did not want to be bound by the $10 million expenditure limit that this money entails, For some time now many observers have believed that expenditure limits are too low. Communication with the voters is impaired. I share that opinion. It is plausible that Congress will move to raise the limitations. At that point office holders will again be able to write the rules, to rewrite the dispensing formula, to adjust the conditions of qualification and so forth. And it is safe to suppose that partisan interests will be inherent in that process.

To review, it appears that public finance, although intended to promote first amendment values of debate and discussion, is an idea to approach with caution. The danger that the government may be entangled in internal party affairs is substantial; the risks of improper influence are real; the notion that "dirty" private money can be displaced with "clean" government funds

proves to be illusory. We do not have time to explore the other hazards of public finance, but they can be listed as follows:

1. Most systems will tend to favor established parties over new ones and major parties over minor ones thereby diminishing the voices of dissent within the political marketplace.

2. When coupled with spending limitations (as public funding has been), these schemes accomplish indirectly what is unconstitutional when done directly--namely they put a lid on the amount of communication in which candidates can engage.

3. Inasmuch as money comes with strings attached, the tax dollar financing of campaigns, makes running for office "a regulated industry, complete with all the familiar trappings, reports to file, forms to fill out, regulations to observe, and a regulatory commission to live with." [Polsby, p.4]

Last year, as he opened hearings on H.R. #1, a bill providing partial public financing of Congressional campaigns, Representative Frank Thompson, Chairman of the House Administration Committee asserted, "Public financing represents an idea whose time, indeed, has arrived." [Hearings, p. 123] In spite of 150 congressional sponsors H.R. #1 did not become law; I hope it encompassed an idea whose time will shortly pass.

V. Conclusion

In no other realm, perhaps, is free and unfettered speech more vital than it is in electoral politics. The hazard of corruption is authentic. Still we do well to recall the Watergate crimes were in fact crimes before the 1974 and 1976 amendments became law. The reformers mean well. Nevertheless, the unintended consequences of limitations on contributions and on independent expenditures, the unintended consequences of disclosure regulations on minor parties, and the unintended consequences of public finance have been unfortunate. They amount to restrictions on wide open, free ranging, political debate. The "good guys," I fear, have done ill. Broder put it aptly when he observed: "The only thing more dangerous to democracy than corrupt politicians may be politicians hell-bent on reform." [Cited by Arnett, p. 623]

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